(3) that P.T. Seah & Co. do submit a bill of costs for both solicitor and client costs to the applicant and party and party costs against the first defendants within 30 days from the date of this order;

(4) that the costs of and incidental to this application be paid by P.T. Seah & Co.

Order accordingly.

Solicitors: *G. Raman & Partners; P.T. Seah & Co.*

WONG HONG TOY & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Lai Kew Chai J.) November 10, 1986]

[Singapore – Magistrate Appeals Nos. 374 & 375 of 1985]

Criminal Law – False statutory declaration – Charge – "Declaration" – Meaning of – Appeal against conviction and sentence – Penal Code (Cap. 103, 1970 Ed.) ss. 193 & 199.

Evidence – Distinction between statutory declaration made and declaration voluntary made – Statutory Declarations Act (Cap. 13, 1970 Ed.), s. 4 – R.S.C. 1970, O. 41 r. 5(2).

In September 1985, the appellants underwent a joint trial in the District Court. They were separately charged for having made a false declaration, which a public officer was authorized by law to receive as evidence, which they knew contained a false statement on a material point within the meaning of section 199 of the Penal Code (Cap. 103, 1970 Ed.) After the close of the case for the prosecution, the Senior District Judge held that a *prima facie* case had been established against both the appellants. The appellants did not give evidence in their defence. Both the appellants were convicted and each of them was sentenced to three months' imprisonment. The appellants appealed against their convictions and sentences.

Held: (1) an offence under section 199 of the Penal Code is by the terms of that section statutorily regarded for the purposes of punishment as serious as the offence of giving false evidence under section 191 of the Penal Code which is equivalent to the offence of perjury under English law;

(2) a "declaration" falling within the ambit of that expression in section 199 of the Penal Code may be (i) a statutory declaration duly made in accordance with the Statutory Declarations Act (Cap. 13, 1970 Ed.) by reason of the statutory presumption under section 4 thereof, or (ii) a declaration voluntarily made or subscribed, though not sworn or affirmed, if it was made or subscribed under circumstances in which the declarant knew or must have known that the statement in his declaration will be and was received by a court or public officer as evidence of a fact in issue under Order 41 rule 5(2) of the Rules of the Supreme Court 1970;

(3) at the time the request was made by the receiver, the purpose of and the need in those circumstances for independent verification of the accounts were plain to any reasonable person. It was undoubtedly plain and appreciated by both the appellants at the time they made the declaration. They clearly knew the serious purport of the declaration;

(4) when the appellants made the joint declaration (i) they knew or must have known that it would be exhibited by the receiver in the receivership proceedings; (ii) they knew that serious questions were raised about the Workers' Party's fraudulent conduct; and (iii) they made the declaration with the intention of persuading or convincing the judgment creditor and the Assistant Registrar that the relevant accounts had exhibited a true and fair view of the transaction of the Workers' Party during the crucial accounting period;

(5) the convictions of both appellants were affirmed. The sentences of both were varied to one month's imprisonment and $10,000 fine for each of them.

Cases referred to:

(1) *Haw Tua Tau* v. *Public Prosecutor* [1981] 2 M.L.J. 49.
(2) *Workers' Party* v. *Tay Boon Too* [1975] 1 M.L.J. 47.
(3) *Workers' Party* v. *Tay Boon Too & Anor.* [1975] 2 M.L.J. 124.
(4) *A. Vedamuttu* (1868) 4 Madras H.C.R. 185.
(5) *Ismail* v. *Emperor* (1914) 15 Cr. L.J. 603; A.I.R. 1914 L.B. 30.
(6) *Velumailum* v. *Public Prosecutor* [1947] M.L.J. 152.
(7) *Teh Kim Chooi* v. *Regina* [1955] M.L.J. 37.
(8) *Baban Singh & Anor* v. *Jagdish Singh & Ors.* A.I.R. 1967 S.C. 68.
(9) *Asgarali Mulla Ibrahimji* v. *Emperor* A.I.R. 1943 Nagpur 17, 19.
(10) *Metropolitan Properties Co. (F.G.C.) Ltd.* v. *Lannon & Ors.* [1968] 3 All E.R. 304.
(11) *Davies* v. *Regina* (1974) 59 Crim. App. Rep. 311.

MAGISTRATE APPEALS.

Lord Hugh Emlyn Hooson Q.C. (*Subhas Anandan* with him) for the appellants.

Tan Teow Yeow (*Loke Yuen Kee* with him) for the respondent.

Cur. Adv. Vult.

Lai Kew Chai J.: In September 1985 the appellants, who I will refer to as "Wong" and "Jeyaretnam" respectively, underwent a fresh joint trial in the District Court. They were separately charged for having made a false declaration which a public officer was authorized by law to receive as evidence which they knew contained a false statement on a material point within the meaning of section 199 of the Penal Code.

Section 199 of the Penal Code reads:

"199. Whoever, in any declaration made or subscribed by him, which declaration any court of justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence."

An offence under section 199 of the Penal Code is by the terms of that section statutorily regarded for the purposes of punishment as serious as the offence of giving false evidence under section 191 of the Penal Code which is equivalent to the offence of perjury under English law. Under section 193, the prescribed punishment for giving false evidence in a judicial proceeding is imprisonment for a term which may extend to seven years and a fine.

After the close of the case for the prosecution, the Senior District Judge held that a *prima facie* case against the appellants had been established which, if unrebutted, would have warranted their convictions. After the usual allocution was administered by the Senior District Judge, the appellants proffered no evidence in their defence. In consequence, the Senior District Judge could "draw such inferences from the refusal (to give evidence) as appear proper": see section 195(2)(b) of the Criminal Procedure Code and the leading case of *Haw Tua Tau* v. *Public Prosecutor*.[1] The appellants were convicted.

In spite of the seriousness of the offences for which the appellants were found guilty, they failed to take the opportunity to make a mitigation plea. They were each sentenced to three months' imprisonment. They brought this appeal to the High Court against both the convictions and sentences. There is no appeal from the Public Prosecutor on the sentences. The hearing of the appeal concluded last Tuesday and I reserved judgment.

The factual matrix giving rise to the prosecution is, on a review of the entire evidence, largely beyond dispute. It started in 1972 as a result of civil litigation initiated by the Workers' Party, a political party of which Wong and Jeyaretnam were at all material times the chairman and the secretary-general respectively. By two consolidated actions in the High Court, it claimed damages for alleged defamation against one Tay Boon Too, who was then a Member of Parliament and who I will refer to as "the judgment creditor", and against the Attorney-General representing what was then the Department of Broadcasting. In those proceedings, Jeyaretnam appeared as counsel of and his firm acted as solicitors for the Workers' Party. Its claims were dismissed on the ground, *inter alia*, that the Workers' Party had failed to set out in the statement of claim and had also failed to prove at the trial the original words allegedly spoken in Hokkien, which the learned trial judge, Chua J., held was a fatal flaw as a matter of law: see *Workers' Party* v. *Tay Boon Too*.[2] The learned trial judge was plainly right in this and in other respects. He was accordingly affirmed by the Court of Appeal: see *Workers' Party* v. *Tay Boon Too & Anor*.[3] In consequence, the Workers' Party, like any other unsuccessful litigant, was mulcted in costs. The judgment creditor alone was owed taxed costs as on July 10, 1975 in the sum of $17,101 together with interest thereon at 8% per annum until payment.

During the intervening period of more than six years, the Workers' Party failed to pay the judgment creditor his judgment debt. I now come to the written demand sent by his solicitors to J.B. Jeyaretnam & Co, the solicitors for the Workers' Party. By a written demand dated January 23, 1982, the solicitors of the judgment creditor demanded payment of the taxed costs and the accruing interest by January 27, 1982 failing which the judgment creditor would "levy execution". I stress the date of the written notice because from the ensuing events, to which I shall advert later in this judgment, I am satisfied that the reactions of the appellants upon their receipt of this notice were clearly the "*fons et origo*" (the source and origin) of the appellants' subsequent brushes with the criminal law of the land.

Not eliciting the desired response, the judgment creditor on February 3, 1982 applied to the High Court for leave to levy execution, since the judgment debt had been outstanding for more than six years. The relevant papers were served on J.B. Jeyaretnam & Co. When the application came up for hearing on February 22, 1982 the Assistant Registrar granted leave to levy execution. On the same day and as usual in such cases, an order *nisi* was granted to garnish the moneys of the Workers' Party in the Bank of China. However, the garnishment proceedings only recovered for the judgment creditor the paltry sum of $18.47.

In view of the many publicly known activities of the Workers' Party, including another defama-

tion suit which it was initiating, all of which obviously required financial means, the judgment creditor suspected, quite rightly as it turned out, that something was amiss, as he asserted in his affidavits, and he sought equitable relief from the High Court. On May 22, 1982 he applied to the High Court for the appointment of a receiver in aid of his execution process. On June 3, 1982 the Assistant Registrar of the Supreme Court made an order appointing Mr. Lim Ewe Huat, who was the Official Receiver, the receiver. By a further order dated June 11, 1982 the receiver was empowered "to receive the assets of (the Workers' Party) and all moneys collected from members of the public by the officials and members of the (Workers' Party) and by others acting on behalf of the (Workers' Party) by way of costs and interest thereon."

On June 15, 1982 the receiver had a meeting with Jeyaretnam during which the functions of the receiver and the funds of the Workers' Party were discussed. On the following day, the receiver again had a meeting with Jeyaretnam, but on this occasion Wong and one A. Balakrishnan, the treasurer of the Workers' Party, were also present. At the trial below, the receiver testified that he had specifically asked Jeyaretnam if any of the officials of the Workers' Party had received moneys on behalf of the party to which Jeyaretnam's reply was in the negative. As will be seen later, Jeyaretnam's answer to the receiver was plainly untrue.

Following the meetings, the receiver wrote to Wong setting down what was agreed at the meetings and stated that all moneys or assets held by officers and others on behalf of the Workers' Party had to be handed over to him, that all payments on behalf of the Workers' Party could only be effected by him alone and that he was to take control of the financial arrangements of the party. On the same day, the receiver wrote to A. Balakrishnan, as the party's treasurer, for all the relevant account books, vouchers and other accounting documents for the period from January 1, 1982 up to the date of his appointment. Specifically, the receiver asked him to furnish him with the income and expenditure account of the party for the period from January 1, 1982 up to the date of the receiver's appointment, *i.e.* June 3, 1982, and the balance sheet of the Workers' Party ended June 3, 1982. The receiver also asked for the income and expenditure accounts and the balance sheets of the previous two years. In evidence, the receiver explained, and in my view, quite properly and credibly, that he had required those accounts and the supporting documents so that he could as a good steward ascertain the true assets of the Workers' Party and their locations as at the date of his appointment as the receiver. By the terms of the court's order, he was directed to receive the assets of the Workers' Party. The procedure the receiver had adopted was absolutely necessary to ascertain and call in the assets. Any suggestion that his role was limited merely to the receipt of whatever the officials of the Workers' Party thought fit to hand over is, in my view, quite untenable, particularly in view of the assertions of the judgment creditor made in the course of the receivership proceedings that the Workers' Party was hiding its assets and keeping them away from his reach as the judgment creditor. Both appellants were participating in and were directly concerned with the receivership proceedings and they knew that the question whether or not the Workers' Party was contriving to keep away its moneys from the reach of the judgment creditor was a very live and controversial issue in those proceedings.

A. Balakrishnan in due course prepared, as he had to, and sent to the receiver a receipts and payments account and an income and expenditure account covering (it must be noted) the period January 1, 1982 to June 16, 1982, the date up to which he was responsible. I shall refer to this period as "the crucial accounting period". He also sent the balance sheet of the Workers' Party covering the period which ended on June 16, 1982. On the request of the receiver, A. Balakrishnan also affirmed and filed in court an affidavit on July 6, 1982 which was entitled with the heading of the receivership proceedings and in which he affirmed that the aforesaid accounts, which were signed by him and annexed to his affidavit, were "true to the best of (his) knowledge and belief."

As a further precaution, and on the evidence, quite prudently in my view, the receiver also required a joint statutory declaration to be made by Wong and Jeyaretnam to confirm that the said accounts prepared and drawn up by A. Balakrishnan exhibited a true and fair view of the financial transactions of the Workers' Party covering the crucial accounting period and of the state of affairs of the Workers' Party as on June 16, 1982. The receiver accordingly drafted the statutory declaration, a draft of which was posted to Wong and Jeyaretnam by Mrs. Loh Wai Ching, an accountant who was assisting the receiver. Wong and Jeyaretnam, who had ample time to consider

the matter, complied with the request. On August 3, 1982 they jointly made a declaration before a Mr. Daljit Singh, a Commissioner for Oaths.

Before I set out the joint declaration in full, which formed an essential piece of prosecution evidence, I must recite the evidence given by the receiver as to the reasons why he had requested for the joint statutory declaration, which Jeyaretnam in cross-examination had claimed he was tricked into making. The receiver said he did so as a precaution, seeing that the accounts were unaudited. Further, he explained that he wanted responsible officers of the Workers' Party, other than A. Balakrishnan who had prepared the said accounts, to confirm the truth of those accounts. This aspect of his evidence was clearly corroborated, if corroboration is required, by Mrs. Loh Wai Ching who said: "Mr. Lim wanted an independent verification of the accounts as the accounts had not been subjected to an audit. He wanted a verification by someone other than one who had prepared the accounts." In my view, at the time the request was made by the receiver, the purpose of and the need in those circumstances for independent verification of the accounts were plain to any reasonable person and, in my judgment, it was undoubtedly plain and appreciated by both the appellants at the time they made the declaration. They clearly knew the serious purport of the declaration.

The joint declaration, exhibit P13A, reads as follows:

"In the High Court of the Republic of Singapore

Suit No. 1913)
)
of 1972.) Between
The Workers' Party ... Plaintiff
And
Tay Boon Too .. Defendant
AND
Suit No. 1207)
)
of 1973.) Between
The Workers' Party ... Plaintiff
And
The Attorney-General ... Defendant

(Consolidated by Orders of Court dated the 11th day of February 1974)

Statutory Declaration

We, Wong Hong Toy (NRIC No: 0587950/C) and Joshua Benjamin Jeyaretnam (NRIC No: 0514243/A) being respectively the Chairman and Secretary-General of the Workers' Party, do hereby declare that the:

(a) receipts and payment account for the period January 1, 1982 to June 16, 1982,

(b) income and expenditure account for the period January 1, 1982 to June 16, 1982 and

(c) balance sheet as at June 16, 1982

drawn up by A. Balakrishnan, the treasurer of the Workers' Party, and affirmed by him in an affidavit dated July 6, 1982, exhibit a true and fair view of the transactions and results for the period specified therein and of the state of affairs of the Workers' Party as at the date specified.

Declared this August 3, 1982.)

Sgd: Wong Hong Toy

.....
Wong Hong Toy (NRIC No: 0587950/G)

Sgd: J. B. Jeyaretnam

.....
Joshua Benjamin Jeyaretnam (NRIC No: 0514243/A)

Before me,

Sgd: Mr. Daljit Singh Johal

.....
DALJIT SINGH
Commissioner for Oaths
Singapore"

It will be seen that exhibit P13A, in spite of the caption "Statutory Declaration", did not contain the words of solemn declaration as prescribed in the Schedule to the Statutory Declarations Act (Cap. 13, 1970 Ed.) of Singapore. It is not disputed in this appeal that two legal consequences followed, namely (1) that the appellants' declaration in exhibit P13A could not be deemed to be a declaration made by virtue of the provisions of the Statutory Declaration Act 1835 of the United Kingdom and (2) that the appellants' declaration accordingly could not "be deemed to be such declarations as are referred to in sections 199 and 200 (which is irrelevant for present purposes) of the Penal Code": see sections 3 and 4 of the Statutory Declarations Act (Cap. 13, 1970 Ed.) of Singapore.

The receivership proceedings which were invoked by the judgment creditor were interlocutory proceedings under our Rules of the Supreme Court 1970. The receiver "must submit accounts to the court ... in order that they may be passed" and such accounts "must be accompanied by an affidavit verifying it": see Order 30 rules 4(1) and 4(2). In the ordinary way, the receiver's account and the supporting affidavit are left at the registry of the Supreme Court and a judgment

creditor or a party having the conduct of the matter has to obtain an appointment from the Registrar for the purpose of passing the account: see Order 30 rule 4(3). By Order 30 rule 4(4), it is provided that the passing of a receiver's account must be certified by the Registrar. It is pertinent for the purposes of this case to mention that in interlocutory proceedings, of which the receivership proceedings are an example, procedural rules are made, for reasons of practicality, that evidence may be given by affidavits in lieu of direct oral evidence, sworn or affirmed before a court: see Order 41 of the Rules of the Supreme Court 1970.

Order 41 rule 5(1), so far as is relevant for present purposes, provides:

"Subject ... to paragraph (2) of this rule ..., an affidavit may contain only such facts as the deponent is able of his own knowledge to prove."

This rule, it will be seen, enshrines the evidentiary rule against the admission of hearsay evidence.

Paragraph (2) of Order 41 rule 5 provides:

"An affidavit sworn for the purpose of being used in interlocutory proceedings may contain statements of information or belief with the sources and grounds thereof."

It should be noted that this paragraph makes an exception to the evidentiary rule against the admission of hearsay evidence in interlocutory proceedings provided that the sources and grounds of the statements of information or belief are set out. Upon compliance with the requirements of this paragraph, the statements of information or belief asserted by a deponent of an affidavit and the statements of facts stated in any documentary annexures are received as evidence and may be acted upon by a Registrar, his assistants or a judge under our Rules of the Supreme Court, subject obviously to challenge, if any, by the opposing party. Such evidence from direct or indirect sources is frequently relied on to dispose of the bulk of judicial business in the countless interlocutory applications handled by the High Court. Any person who has anything to do with interlocutory proceedings has to regard the giving of such evidence as a serious matter.

Pursuant to Order 30, the receiver submitted his account for the purpose of passing it. His account was verified, as required, by his affidavit to which was annexed the appellants' joint declaration as permitted by Order 41 rule 5(2) as recited above.

At the trial, it was the case for the prosecution and incontrovertible evidence was led that during the crucial accounting period, the Workers' Party had received three cheques. Each of the three cheques tendered in evidence contained the name of the Workers' Party as the payee. In each case, the name of the Workers' Party was written by the person who issued the cheque. The first cheque, exhibit P6A, was a crossed cheque dated January 19, 1982 for $2,000 drawn by a Dr. Ivy Chew. The second cheque, exhibit P7A, was originally an order cheque dated March 10, 1982 for $200 drawn by a Mr. Ping Koon Yam which was subsequently altered by him to a bearer cheque. The third cheque, exhibit P8A, was a crossed cheque dated May 22, 1982 for $400 drawn by a Mr. Willie Lim Thian Sze which was subsequently altered by him to a cash cheque.

Wong and Jeyaretnam received all the three cheques from the drawers. Although both of them knew of the separate receipts of the three cheques on behalf of the Workers' Party, seeing that the Party was in each case the payee, they did not cause them to be paid into the bank account of the Workers' Party maintained with the Bank of China. As regards Dr. Chew's $2,000 cheque, both the appellants in their official capacities as the chairman and secretary-general of the party signed an endorsement on the back of the cheque. It was only on February 16 or 17, 1982 (well after the written notice of the judgment creditor threatening execution) that this cheque, as endorsed, was delivered by Wong to the law firm of Murugason & Co. who were acting for a Madam Chiew, the mother of Jeyaretnam's election agent in the December 1980 general elections in which Jeyaretnam was an unsuccessful parliamentary candidate. Madam Chiew was unsuccessful in her petition to invalidate the election of Jeyaretnam's opponent in that election, in consequence of which she had to pay the costs or face bankruptcy. The proceeds of Dr. Chew's cheque were utilized to pay Madam Chiew's personal judgment debt rather than the judgment debt of the Workers' Party.

Ping's $200 cheque was also endorsed, on this occasion by Jeyaretnam and A. Balakrishnan, and it was paid by Wong into his personal account with the Bank of America. Willie Lim's cheque was cashed by an unknown person.

In those circumstances, the gist of which is set out above, both the appellants were convicted of three charges that in furtherance of a common intention of them both they had fraudulently delivered without adequate consideration to third parties the property of the Workers' Party in the three cheques knowing it to be likely in each case that they would thereby prevent the distribution of the property amongst the creditors of the Workers' Party, which were offences punishable under section 421 read with section 34 of the Penal Code. Both the appellants were convicted on the three charges relating to the three cheques and were fined $1,000 each in respect of each of the offences.

The convictions of the appellants on each of the three offences of fraudulently removing property to prevent distribution among creditors must now stand as final in law and in fact. After their convictions, they unsuccessfully applied to the learned Chief Justice to state some nine questions said to be questions of law of public interest. They then appealed to the Court of Criminal Appeal in Criminal Appeal No. 9 of 1985 [see [1986] 1 M.L.J. 453]. That appeal before three judges of the Supreme Court was dismissed because the Court of Criminal Appeal on a true and proper construction of section 44(1) of the Supreme Court of Judicature Act (Cap. 15, 1970 Ed.) held that it did not have the jurisdiction to entertain the appeal. Not satisfied with that decision, the appellants sought leave to appeal to the Judicial Committee of the Privy Council which refused leave and affirmed the decision of the Court of Criminal Appeal.

At the trial below, the prosecution also led evidence which revealed that the fact of the receipts of the three cheques on behalf of the Workers' Party did not appear in any of the accounting records nor were the transactions reflected in the relevant receipts and payment account and the income and expenditure account covering the crucial accounting period during which, it will be recalled, the transactions relating to the three cheques had taken place. Mr. Keith Tay, an expert on accountancy, in his evidence opined that it was a basic accounting requirement that the transactions relating to the three cheques should have been duly recorded in the accounting books of the Workers' Party.

The Senior District Judge said this of Mr. Keith Tay's evidence:

"32. Keith Tay Ah Kee (P.W.5) stated in evidence that he had examined the three cheques in question together with the accounts that had been submitted by A. Balakrishnan, the relevant statements of the Party's officials and other relevant documents. As regards the first two cheques, exhibits (P.6A and P.7A, he stated that the transactions regarding them, namely, their receipt and payments out from them, had been 'completely omitted' from any mention in the Party's accounts. He stated that both these sums (as well as that in P.8A) should be treated as 'donation income' of the Party. The cheques in question were made payable to the Party and received by officials of the Party and accordingly their receipt (by the Party) in those circumstances would require a recording of that fact in the first instance before they were disbursed, as in this case. In his opinion it was basic accounting practice and procedure that all receipts of cheques and cash paid to the Party must be recorded in the Party's books (in particular, the cash book) as any failure to do so would result in such items 'lying around' and increasing the risk of misappropriation, a situation that was both undesirable and deplorable. Even in a situation where it is discovered that a cheque or cash recovered was not intended for the Party but had nevertheless been sent erroneously to the Party, the fact that the Party had received it must be recorded in the Party's books in the first instance. The fact that payments are subsequently made from such receipts or where they are returned to the person who had erroneously sent it, if at all, would also have to be recorded, although any explanations as to why such payments or refunds were made would be a secondary matter. Where a complete record is maintained in the books the final accounts that would be prepared from such books would then only show a 'true and fair view' of the transactions of the Party during the period covered by the accounts. Conversely, where a complete record of all transactions, *i.e.* receipts and/or payments, was not maintained, such as in the present case of the Party's books, which 'completely omitted' the transactions concerning exhibits P.6A and P.7A, the resulting accounts submitted by A. Balakrishnan, the Party's treasurer, and affirmed by both the accused persons as 'true and fair', could not therefore present a 'true and fair view' of the transactions of the Party for the period in question. In the present case the receipt of the two cheques, exhibits P.6A and P.7A, and their use thereafter by the Party, should have, if a proper record had been maintained, appeared in the receipts and payment account and the income and expenditure account, for the relevant period, and in the balance sheet as at June 16, 1982. As to whether they should appear as 'assets' or 'contingent assets' of the Party in the balance sheet as at June 16, 1982 depended on the manner in which they had been used and whether the Party was authorized by its constitution to so use the proceeds from those cheques. This was however, an issue not included in his (P.W.5's) brief, when called by the prosecution, which was to inquire into the three cheques, exhibits P.6A, P.7A and P.8A, and as to whether they should have been included in the books of the Party and later reflected in the acounts in question."

In these circumstances, the evidence unquestionably established (a) that the said accounts prepared by A. Balakrishnan and filed in court did not reflect a "true and fair" view of the financial transactions of the Workers' Party during the crucial accounting period, and (b) that the joint declaration, exhibit P13A, made by the appellants

which was also filed in court purporting to state that those accounts had reflected such "true and fair" view of the said accounts was manifestly false.

At the close of the case for the prosecution, the Senior District Judge was satisfied that the prosecution had established a *prima facie* case for the offences under section 199 of the Penal Code, the ingredients of which he set out as follows:

"(a) that the accused made a declaration;

(b) that the declaration made by the accused was one which a court or a public officer was bound or authorized by law to receive as evidence of any fact;

(c) that within this declaration is a statement, made by the accused, which is false and which the accused did not believe to be true; and

(d) that the false statement contained in the declaration made by the accused touches a point material to the object for which the declaration was made."

As I had said earlier, the appellants elected not to give evidence. They were duly convicted by the Senior District Judge.

I now turn to the grounds of appeal which were canvassed on behalf of the appellants by Lord Hugh Emlyn Hooson Q.C., the main ground of which is this. It is submitted that the joint declaration, not having been made on oath or affirmation, could not by itself stand as evidence of the fact therein stated in lieu of personal testimony under such oath or affirmation within the scope of section 199. In particular, it is further argued, that the declaration made and put before the Assistant Registrar, though a public officer, was not a declaration which he was "... authorized by law to receive as evidence of any fact ...". Lord Hooson in elaboration says that it would be illogical for the legislature to have provided that the offences of making false statements under oath and the making of false voluntary statements not made under oath were to be punishable in the same way. In support of these submissions, Lord Hooson cited two decisions of the Indian High Court, namely, *A. Vedamuffu*[4] and *Ismail* v. *Emperor*[5] and two Malayan High Court decisions, namely, *Velumailum* v. *Public Prosecutor*[6] and *Teh Kim Chooi* v. *Regina.*[7] I will consider these authorities later in this judgment. Lord Hooson therefore contends that the Senior District Judge had erred in law in concluding that the words, namely, "a declaration made or subscribed" in section 199 of the Penal Code, do not require that the joint declaration of the appellants be made upon oath or affirmation.

On this point in issue, which was argued extensively in the court below, the Senior District Judge stated:

"This point can be disposed of briefly. Section 199 only refers to a 'declaration made or subscribed'. It does not require that it be made under oath or affirmation. In fact section 199 should not be confused with the provisions of section 191 or section 192 (of the Penal Code) which refer to declarations or statements that are made under oath or made by persons 'legally bound by oath, or by any express provision of law to state the truth'. It would suffice if it is proved that the accused persons, in the present case, merely made the declaration, exhibit P.13A, and made it voluntarily and thereafter signed it. There was no dispute on this. The defence, however, chose to read into section 199 the requirement that all 'declarations' referred to therein should be sworn or affirmed. Although this may be so where the declaration is a 'statutory declaration' made under the Statutory Declaration Act 1835 (see: section 4 of the Statutory Declarations Act 1835), it is not a requirement for other declarations which would only require the additional ingredient that it is one which a court was 'bound or authorized by law to receive as evidence of any fact'. In fact a declaration as referred to in section 199 of the Penal Code (Cap. 103) need not even be made before anybody, let alone Daljit Singh, so long as it can be proved that the signatures ascribed to the declaration are those of the accused persons and that the accused persons made it (the declaration) voluntarily.

The above point was decided in the case of *Baban Singh & Anor.* v. *Jagdish Singh & Ors.* 1967 Cri. L.J. 6 where, at p. 8, his Lordship Hidayatullah J. stated thus:

'... Section 199 deals with a declaration and does not state that the declaration must be on oath. The only condition necessary is that the declaration must be capable of being used as evidence and which any court of justice or any public servant or other person is bound or authorized by law to receive as evidence ...'

Section 199 of the Indian Penal Code, incidentally, is *in pari materia* with our section 199."

The recent case of *Baban Singh*[8] is, so far as I am aware, the only decision of the Supreme Court of India touching on the type and nature of a declaration which would fall within the ambit of section 199 of the Penal Code. If, as I shall have to decide, what is quoted as having fallen from the lips of Justice M. Hidayatullah is the *ratio decidendi* of the case, the principle of law as enunciated by the Supreme Court of India merits and deserves the highest respect of this court. The highest judicial tribunal of India enjoys undoubted reputation in matters relating to criminal jurisprudence under the Indian Penal Code on which our Penal Code was based.

The facts in *Baban Singh*'s case[8] are relatively simple. But the criminal procedure involved requires some elaboration. Baban Singh and his

wife appeared as witnesses in an inquiry in the High Court at Patna, India. They had fabricated false evidence. They made false declarations in their affidavits which were tendered in the High Court. For such offences under sections 191 and 192 of the Indian Penal Code, which are also *in pari materia* with the corresponding sections of our Penal Code, the High Court at Patna should have but failed in October 1956 to follow an elaborate criminal procedure laid down in section 479A of the Code of Criminal Procedure of India. That procedure, introduced on the first day of 1956, was apparently laid down to deal with perjury in the face of the High Court in judicial proceedings and required the High Court at the final disposal of the proceedings before it to record, if it thought a prosecution for perjury was expedient, a finding to that effect and to state its reasons therefor. More importantly, a witness who was intended to be referred for prosecution had to be given an opportunity of being heard. By section 479A(6) of the said Code, it was provided that no proceedings could be taken under other sections of the Indian Procedure Code for the prosecution of a person giving or fabricating false evidence if in respect of such a person proceedings may be taken under section 479A. Notwithstanding this procedural bar, the High Court at Patna ordered its Registrar to file a complaint for the prosecution of Baban Singh and his wife under section 199 of the Indian Penal Code. They successfully appealed to the Supreme Court of India.

In other words, the prosecution of offences under sections 191 and 192 of the Indian Penal Code had to follow one set of specially prescribed criminal procedure and the prosecution of an offence under section 199 had to follow the other and more generally followed set of criminal procedure.

In those circumstances, it logically followed that keeping the distinction between offences under sections 191 and 192 of the Indian Penal Code on the one hand and an offence under section 199 of the Indian Penal Code on the other was the crucial issue which arose for determination in that case.

Justice Hidayatullah, before stating the passage quoted by the Senior District Judge, had earlier pointed out the distinction in the following terms: at p. 8:

"The difference between sections 191 and 199 is this: section 191 deals with statements and declarations falsely made by a person legally bound by an oath or by an express provision of law to state the truth. Section 199 deals with statements and declarations made voluntarily provided they are capable of being used as evidence and which the court is bound to receive as evidence."

Lord Hooson contends that the principle of law laid down in *Baban Singh*'s case[8] was *obiter dicta* and, if not, the weight of its authority is affected by (a) the absence of any opposition from either the respondents in that case or the State of Patna before the Supreme Court; and (b) the fact that neither *A. Vedamuttu's* case[4] nor *Ismail* v. *Emperor*[5] were cited in argument or in the judgment of the Supreme Court of India.

In my judgment, the *ratio decidendi* laid down by the Supreme Court of India in *Baban Singh*'s case[8] is the passage quoted by the Senior District Judge and that the authority of that case is in no way diminished by the matters mentioned by Lord Hooson. In *A. Vedamuttu*'s case,[4] it was held that the statement of A. Vedamuttu, a Christian, was a part of his deposition as a witness, and as such, not having been made under the sanction of an oath, it was not receivable as legal evidence of the facts stated. In short, it was not a declaration receivable as evidence in lieu of personal testimony. Similarly, the false statement to a revenue surveyor in *Ismail* v. *Emperor,*[5] which might have amounted to giving false information to a public servant with intent that he shall use his lawful power to the injury of another person, was held not to be receivable in evidence as proof of the facts stated in the false statement. There is no such defect in the instant case, as I shall further explain.

It is now convenient to refer to the two Malayan High Court cases relied upon by Lord Hooson, namely, *Velumailum* v. *Public Prosecutor*[6] and *Teh Kim Chooi* v. *Regina.*[7] In both cases, the respective statutory declarations were defective in form for non-compliance with the relevant statutory requirements and accordingly failed to come within the scope of section 199 of the Malayan Penal Code. Unlike the appellants' declaration in the instant case, which is receivable as evidence of a fact under Order 41 rule 5(2) of the Rules of the Supreme Court 1970, the declarations in the two Malayan High Court cases could only stand as a "declaration" within section 199 if they were in law statutory declarations. In other words, the technical defect in P13A, by reason of which it is not a statutory declaration, is of no legal consequence. Accordingly, the two Malayan High Court cases are of no assistance to the appellants before me.

The instant case is distinctly different. The learned Chief Justice had ruled on this issue when he ordered the re-trial of the appellants in this case. I entirely agree with him when in the course of his impeccably reasoned judgment he said:

"In my judgment, the declaration ('P13A'), being a document which was permitted by Order 41 rule 5(2) to form part of the affidavit accompanying the receiver's own account presented to the High Court for passing and certification, was a declaration which the court was authorized by the Rules of the Supreme Court to receive as evidence in the receivership proceedings. It is immaterial that the receiver was not required under Order 30 to prepare the Workers' Party accounts for presentation and passing by the court in the receivership proceedings. It was a document which the receiver was permitted by the rules of court to place before the court in the receivership proceedings and in particular it was a document which the receiver could properly place before the court in order that his own accounts presented to the court as required by Order 30 could be passed and certified."

In my considered opinion, the clear and unequivocal position in law is this: a "declaration" falling within the ambit of that expression in section 199 of the Penal Code may be (i) a statutory declaration duly made in accordance with the Statutory Declaration Act (Cap. 13) by reason of the statutory presumption under section 4 thereof; or (ii) a declaration voluntarily made or subscribed, though not sworn or affirmed, if it was made or subscribed under circumstances in which the declarant knew or must have known that the statement in his declaration will be and was received by a court or a public officer as evidence of a fact in issue under Order 41 rule 5(2) of the Rules of the Supreme Court 1970.

The next argument on behalf of the appellants concerns their knowledge when they made the joint declaration. It is submitted by Lord Hooson that the prosecution had to prove beyond reasonable doubt that the appellants knew or must have known that their joint declaration would be tendered as evidence in the receivership proceedings. He submits that the prosecution had failed to do so. He says that the evidence led revealed that the appellants were not expressly told that their joint declaration would be used as evidence in court. The Senior District Judge inferred as a fact that they must have known that their joint declaration would inexorably be used and they had intended it to be used as evidence to show the assets and financial position of the Workers' Party and for the passing of the receiver's account by the Registrar. I entirely agree with the Senior District Judge. The textual contents of the appellants' joint declaration in exhibit P13A recited the title of the consolidated actions between the Workers' Party and the judgment creditor in the High Court of Singapore. That was a clear indication that it was to be tendered to and would be used as evidence in the receivership proceedings. It is an inescapable conclusion, in my opinion, that they had in truth and in fact intended to make a "statutory declaration" and, but for the defect in the form, P13A would have been statutorily deemed to be a declaration within section 199 of the Penal Code and would have been conclusive on this point. I have already referred at length to the factual context in which the joint declaration was required by the receiver. In particular, the issue whether the Workers' Party was fraudulently hiving off its assets to the detriment of its creditors was very much alive and controversial at the time the appellants were asked to make the joint declaration. It was not the case that they were rushed into it. The draft was sent to them by post and in due course they turned up at the receiver's office and made the declaration voluntarily. They continued to take part in the receivership proceedings after they had known that their joint declaration had been filed in court without a whimper of a protest. They plainly intended that their joint declaration was to be received and relied upon as evidence of what was asserted therein. I am therefore satisfied beyond reasonable doubt on the evidence that when they made the joint declaration (a) they knew or must have known that it would be exhibited by the receiver in the receivership proceedings; (b) they knew that serious questions were raised about the Workers' Party's fraudulent conduct; and (c) they made the declaration with the intention of persuading or convincing the judgment creditor and the Assistant Registrar that the relevant accounts had exhibited a true and fair view of the transactions of the Workers' Party during the crucial accounting period.

In the circumstances, the joint declaration of the appellants falls squarely within the second category of declarations which are receivable in evidence as mentioned by Niyogi J. in *Asgarali Mulla Ibrahimji* v. *Emperor.*[9]

In the course of arguments, Lord Hooson also says that the receiver had exceeded his powers. For the reasons given earlier, I am of the view that the request for the relevant accounts covering the crucial accounting period was proper, prudent and reasonably necessary to make sure that he would receive all the assets of the Workers' Party. As he had said in evidence, which I wholly accept, he had to start at a point of time and he had to start his

stewardship correctly by taking over all the assets justly and truly belonging to the Workers' Party. Lord Hooson also questions the validity of the appointment of Mr. Daljit Singh as a Commissioner for Oaths. As the prosecution had not relied on the joint declaration as a statutory declaration, and had also not asserted that the appellants had either sworn or affirmed the joint declaration, the question of the validity of the appointment does not arise at all in this case. For the avoidance of doubt, however, I would affirm that the Senior District Judge was plainly right in his conclusion that Mr. Daljit Singh's appointment as a Commissioner for Oaths was valid in law at all material times.

Finally, Lord Hooson says that the convictions cannot stand because it was "unwise" for the Senior District Judge to have sat in judgment of the appellants seeing that at the time the police investigations were in progress the Senior District Judge was employed as a Senior Deputy Public Prosecutor in the Public Prosecutor's office. That was the only coincidence. At the trial the appellants conceded, and Lord Hooson repeats the concession before me, that the Senior District Judge had no personal bias against the appellants. Further, the appellants were not suggesting that he had read the investigation papers or that he had taken any part in the preparation or discussion of the case, the conduct of which was entirely in the hands of another Deputy Public Prosecutor. In the history of our administration of justice, ten Deputy Public Prosecutors have been appointed District Judges over the last 24 years and many legal officers have been elevated to the High Court Bench over the last 50 years. In these circumstances, there can be no suggestion whatsoever that any right-thinking person can think that there was in this case any real likelihood of bias nor can he entertain any reasonable suspicion of bias within the meaning of the test laid down in the famous case of *Metropolitan Properties Co. (F.G.C.) Ltd.* v. *Lannon & Ors.*[10] I must reject this ground of appeal as totally devoid of any merit.

Accordingly, for the reasons set out above the appeals against the convictions are dismissed.

On the question of sentence, Lord Hooson pleads in mitigation that "there was really no justification whatsoever for a custodial sentence in this case". He says it was "monstrous". He further says that a political party is not a business and that accounts are not kept by a book-keeper but by a volunteer. He goes on to say that the "contingent" assets of the Workers' Party in the proceeds of the three cheques were used to help others who had a "moral" claim on the Workers' Party. He points to the fines of $1,000 imposed on each of the appellants for each of the three offences relating to the proceeds of the three cheques as sufficient and appropriate to meet the gravity of the matters.

With all due respect to Lord Hooson, who I must say had lightened my burden considerably in the way he had argued the appeal, which was in every respect in accordance with the best traditions of the Bar, I have to say as gently as I mean to that his submissions on sentence were hyperbolical.

The making of a false declaration which a public officer is authorized to receive as evidence in a judicial proceeding is equivalent to the offence of giving false evidence which is, in turn, equivalent to the offence of perjury under English law. The prescribed punishment is imprisonment up to seven years and a fine. It has been said that perjury is the enemy of the administration of justice. For instance, in *Davies* v. *Regina,*[11] it was laid down by the English Court of Appeal that save in the most exceptional cases a custodial sentence is inevitable for perjury. There, a doting father in mitigation falsely swore on oath that his two sons, who were about to be sentenced, were gainfully employed for the previous three weeks and that they were earning between £20 and £28 per week. He further added that his sons appeared to have "knuckled down to work" and showed every prospect of leading a more settled and useful life. Although the perjury was committed almost on the spur of the moment, and although no real harm was done because the mitigation evidence was rejected, the father was sentenced to twelve months' imprisonment. His appeal to the Court of Appeal failed. Roskill L.J. (as he then was) at p. 312 stated:

> "What the learned judge said was that as a matter of sentencing practice it is for all practical purposes impossible to avoid a prison sentence on a conviction for perjury. The learned judge was absolutely right in so saying. There is a long line of cases in this court where it has been said again and again that except in the most exceptional cases (and those must be truly exceptional) where persons are brought to book for perjury it is inevitable that a custodial sentence follows. One can almost go so far as to say that a conviction for perjury and imprisonment are synonymous in most cases. The learned judge correctly directed himself following what this court has said again and again."

Although the offences of the appellants were not committed in open court under oath, an important distinction which I do bear in mind, there are several aggravating circumstances. Having

committed the offences of fraudulently removing property from the creditors of the Workers' Party, they falsely made the declaration purporting to claim that their accounts had truly and fairly reflected the transactions of the Workers' Party during the crucial accounting period in the full knowledge that they had suppressed all references to the receipts and subsequent disposal of the proceeds of the three cheques. Their mental malignity was further evidenced by the fact that both of them, holding responsible offices in a political party, were deliberately and wilfully thwarting a judgment creditor of their party. It was worse in the case of Jeyaretnam who, as an advocate and solictor, is also an officer of this court. Although Lord Hooson made a mitigation plea on their behalf before me, I must note that the appellants had failed to mitigate before the Senior District Judge. I have serious doubts if they are remorseful at all.

Having regard to all the circumstances of this case, I vary the sentences imposed by the Senior District Judge. I sentence each of them to an imprisonment for a term of one month and would also impose on each of them a fine of $10,000. In default, each will have to serve a further term of one month.

Sentence varied accordingly.

Solicitors: *M.P.D. Nair & Co.*

TAN SEOW PONG & ORS. v. PUBLIC PROSECUTOR

[A.Cr.J. (Chan Sek Keong J.C.) November 7, 1986]

[Singapore – Magistrate Appeal Nos. 75, 76 & 77 of 1986]

Road Traffic – Dangerous driving – Particulars in charge – Whether proved – Criminal Procedure Code (1980 Reprint), ss. 158(1), 161, illustration (d) to s. 161, & 395 – Road Traffic Act (Cap. 92, 1973 Reprint), s. 26(1).

Criminal Procedure – Road traffic – Dangerous driving – Particulars in charge – Whether proved – Road Traffic Act (Cap. 92, 1973 Reprint), s. 26(1) – Criminal Procedure Code (1980 Reprint), ss. 158(1), 161, illustration (d) to s. 161 & 395.

The first appellant was charged with three offences. The first was for an offence of dangerous driving under section 26(1) of the Road Traffic Act (Cap. 92, 1973 Reprint). The second charge was for displaying an identification mark of the wrong shape on his car, an offence under rule 11 of the Motor Vehicles (R & L) Rules 1972. The third charge was for driving his car with brakes that were not in good order, an offence under rule 88(1) of the Motor Vehicles (Construction & Use) Rules 1974. The second appellant was also charged with three offences. As in the case of the first appellant, the first charge was one of dangerous driving. The second charge was for driving the said car with an exhaust silencer baffle pipe which was not in good and efficient order, an offence under rule 90(1) of the 1974 Rules. The third charge was for driving a car with a bald tyre and thereby contravening rule 92(1) F of the 1974 Rules. The third appellant also faced three charges. The first two charges of the third appellant were the same as the first two charges of the first appellant. The third charge of the third appellant, however, was that he drove the said motorcar with a slack steering ball joint, an offence under rule 85(1) of the 1974 Rules.

At the close of the prosecution case, the first appellant was acquitted on the second charge and was called to enter his defence on the first and third charges. The second appellant was acquitted on the second and third charges and was called to enter his defence to the first charge. The third appellant was acquitted on the second and third charges and was called to enter his defence to the first charge.

The appellants were tried jointly and convicted at the end of the trial. They were fined $1,000 each and disqualified from holding or obtaining a Class 3 driving licence for one year from the date of conviction. They appealed against their convictions. They contended that there was no evidence to show that each of them had driven the car specified in the charge against them.

Held, dismissing the appeals: (1) as for the first appellant, since he had withdrawn his appeal against the third charge, he must be deemed to have admitted to the third charge. Therefore, as the third arose out of the same incident as the first charge, it followed that this appeal against his conviction in the first charge must fail;

(2) as for the second and third appellants, the prosecution has adduced *prima facie* evidence that each of them drove one of the cars. To acquit the second and third appellants on the ground put forward by their counsel would lead to the conclusion that, as far as the law is concerned, neither the appellant was driving either of the two cars. This is not only an absurdity in fact but also an absurdity in law;

(3) an error of the nature found in the present case comes within the purview of section 161 of the Criminal Procedure Code. However, neither appellant was misled by the error as both of them were aware that they had driven the cars as identified;

(4) section 395 of the Criminal Procedure Code applies in the present case. The failure to pinpoint the motor cars to the appellants was, at the highest, an irregularity which has not and could not have occasioned any failure of justice.

Cases referred to:

(1) *Beh Heng Seong* v. *Public Prosecutor* [1972] 2 M.L.J. 190.
(2) *Simpson* v. *Roberts* (*The Times*, December 21, 1984)
(3) *Scruby* v. *Beskeen* [1980] R.T.R. 420, 422.
(4) *Jones* v. *Metcalfe* [1967] 3 All E.R. 205, 208.